

HUMAN RIGHTS AND TERRORISM

I. INTRODUCTION

- A. Throughout history, and particularly since the establishment of the United Nations in 1945, there has been an ongoing attempt to formulate minimum and binding standards recognized by all nations for the fair treatment of all persons within their borders. Attempts to create these so called human rights standards include:
1. Multilateral treaties binding as a matter of international law on states that choose to become a party to them. For example: The International Covenant on Civil and Political Rights (ICCPR).
 2. Development of customary international law.
 3. Resolutions of International Governmental Organizations. For example, the Universal Declaration of Human Rights (UDHR) (a 1946 United Nations General Assembly Resolution). Such resolutions are not binding under international law as such, but may be evidence of the development of customary international law. They also reflect the moral and political consensus in the world community. As a result, States will often choose to follow General Assembly Resolutions unless faced with extenuating circumstances.
 4. Many domestic laws grant citizens protections against adverse government action. These standards existed in many countries before the establishment of international standards. In other countries they were created as part of a state's obligation under a particular human rights agreement to afford persons within their borders the rights specified in the agreement.
- B. Human Rights standards serve two essential purposes:
1. They protect individual citizens from actions by governments. This assumes that there are some individual freedoms that government cannot take away without proper justification.
 2. They place an obligation on government to provide certain benefits. This assumes that governments have an affirmative obligation to provide certain services to the citizen and that the citizen, through government, can compel the provision of these services.
- C. In the context of the war on terrorism much of the human rights discussion is directed toward those who seek to defend against terrorist acts and capture and

prosecute terrorists. These discussions center on human rights standards designed to protect suspected terrorists who are the subject of criminal investigation, questioning for intelligence purposes, prosecution, and detention. International concern is also focused on the legal limits on the use of military force against terrorists. Consequently, defense against terrorists has raised several important questions about the meaning and application of basic human rights conventions and international treaties concerning the law of armed conflict. These questions will be discussed extensively in other modules included in this seminar. They include:

1. Are terrorist criminals or enemy combatants?
 2. Are terrorists entitled to the same criminal due process rights as other offenders or does the unique threat posed by terrorist activities justify different standards?
 3. If combatants, under what circumstances do terrorists ever qualify for the protections of the Geneva Convention on Prisoners of War?
 4. What limitations on the use of force must be followed when military or police forces are defending against terrorist activities?
 5. Do human rights standards need to be changed in order to adapt to the new threat of mass casualty terrorism?
- D. Another aspect of human rights and terrorism has to do with the motivation of persons who resort to terrorism. Terrorists sometimes attempt to justify their activity as a legitimate means to achieve for themselves or others the protection and benefits provided by human rights standards. In essence they claim the authority of the rule of law to legitimize human rights protections or benefits and then argue that terrorist acts are a legitimate means to achieve redress of these claims. The practice of asserting a human rights justification for terrorist activity leads to several significant questions:
1. What is a legitimate source of authority for determining human rights standards in a world that is ideologically, religiously, and culturally diverse?
 2. What are the legitimate human rights standards that are typically at issue for terrorist groups and what facts must be established to prove a violation of these standards?
 3. Assuming that a legitimate human rights standard can be identified, when if ever will terrorist activities be an acceptable means of seeking fulfillment of the protections or benefits created by that standard?

4. What alternatives to terrorism are available to obtain human rights protections and benefits?

II. DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS STANDARDS

A. The problem of diversity

1. Notions of human rights are founded on religion, philosophy, ideology and culture. Given the diversity of points of view in the world today it is difficult to achieve universal agreement on human rights standards.
3. Nevertheless, it is possible to search for a common ground that will conform or be acceptable to all points of view. The history of the development international human rights standards indicates that this is possible.

B. The international process for formulation of human rights standards creates a favorable environment for development of consensus. The process used for development of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights brought together representatives of all faiths, cultures and ideologies in order to formulate a "common standard of rights and freedoms" that would provide protection to all people.

1. The drafters of the United Nations Charter incorporated specific mention of human rights in the Preamble and the following articles: 1, 13, 55, 56, 62, and 76. The frequent mention of human rights in the Charter indicates that the drafters had some hope that international standards regarding human rights could eventually be developed. The United Nations Charter came into force with the ratification of 51 States.
2. In article 68 the Charter established a commission for the promotion of human rights. The first task of this commission, given by the Economic and Social Council in January 1947, was to draft an international bill of rights.
3. The Universal Declaration of Human Rights was the result of the work of the Human Rights Commission. It was passed by the General Assembly on 10 December 1948 by a vote of 48 to 0 with 8 abstentions.
4. In 1951 the General Assembly directed the Human Rights Commission to create two treaties, one on civil and political rights and another on economic, social and cultural rights. Later it was also decided that provisions that allowed complaints of human rights violations be made optional. After 12 years of debate in the General Assembly Third Committee, the two treaties were finally approved in 1966. In addition,

an "Optional Protocol" that allowed individual complaints was also approved in 1966. In 1976 the International Covenant on Civil and Political Rights (ICCPR) came into force when the 35th State notified the United Nations of ratification.

- C. A country that becomes a party to the ICCPR commits itself to respect the rights specified in it and to insure that all persons within its borders also respect those rights. A country that is party to the ICCPR is also required to take the steps necessary to adopt domestic law or other measures necessary to give effect to the rights in the agreement.
- D. The ICCPR authorizes a country to temporarily suspend most of its obligations under the agreement to the extent strictly required by the circumstances during times of national emergency which threaten the life of the nation. Such an emergency must be officially proclaimed.
- E. However, a country may never suspend its obligations with regard to prohibitions on:
 - 1. arbitrary deprivations of life
 - 2. torture or cruel and inhumane punishment
 - 3. slavery and forced labor
 - 4. imprisonment for debts
 - 5. retroactive application of criminal law
 - 6. freedom of thought, conscience and religion
- F. Countries wishing to limit their obligations under the ICCPR may also do at the time they become a party by making reservations to it. However, these reservations may not defeat the essential purpose of the treaty.
- G. The ICCPR does not yet reflect customary international law, and is therefore not binding on states that are not party to it. Nonetheless, the trend has been for more states to afford more civil and political rights to those within their borders. This trend reflects the widespread and increasing demands of citizens for human rights.

III. HUMAN RIGHTS AS A MOTIVATION

Some terrorists claim to be motivated out of a concern for human rights protection or benefits. In fact, by their brutal violence against the innocent, terrorists reveal their

callous motivation. Terrorists sometimes use the language of human rights in an attempt to legitimize their actions and motivate their followers and supporters. In such cases, human rights standards are manipulated to provide legitimacy for terrorist actions. However, the human rights standards advanced by such terrorists almost never conform to either the language found in international human rights conventions or to the interpretations of that language determined by internationally recognized legal authorities.

A. Self-Determination

1. The right of self-determination is set forth in Article 1 of the ICCPR:

"All peoples have the right of self-determination. By virtue of this right they freely determine their political status and freely pursue their economic, social and cultural development."

2. While the meaning of the term "peoples" is not clear, both debate at the U.N. and the negotiating history of the ICCPR indicate that it was not meant to extend a right of external self-determination to minority groups within a state.
3. There is widespread agreement that there exists a right of internal self-determination. This is the right of people as a whole within a state to independent, democratic institutions that govern the state free from outside interference.
4. People as a whole within a colony or within a country which has been invaded that are seeking to be liberated can support their claims for self-determination on UN Charter Article 73 and General Assembly Resolution 1514 (XV) which adopted the 1960 Declaration on Granting Independence to Colonial Countries and Peoples.
5. The absence of an international law basis for self-determination of minority groups within a state means that such groups must secure their right of internal self-determination through political means. This is often accomplished through:
 - a. An election that determines the will of the majority in a territory.
 - b. An agreement with the host State that provides greater autonomy for the people group.

B. Freedom of Religion

1. ICCPR article 18 includes the following provisions:

- a. *"Everyone shall have freedom of thought, conscience and religion."*
 - b. *"Freedom to manifest one's religion or beliefs may be subject to only such limitations as are proscribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights of others."*
2. The ICCPR seeks to create an environment of maximum freedom for individual conscience within a society having diverse religious convictions. To accomplish this, the ICCPR only allows limitations on religious practice when actions (not opinions) impact the rights of others.
3. Groups that hold a religious belief that compels them to take actions that deprive the rights of others to practice alternative religious beliefs or to hold to no religion at all will have difficulty with the ICCPR standard. Fortunately, most religious adherents are committed to peaceful coexistence with peoples of alternative views.

C. Freedom of Expression

1. ICCPR Article 19 provides:
 - a. *"Everyone shall have the right to hold opinions... and have the right of freedom of expression."*
 - b. *"The exercise of (rights of freedom of expression) carries with it special duties and responsibilities.... for respect of the rights or reputations of others...and protection of national security, public order, or public health or morals."*
2. ICCPR Article 20 includes the provision that: *"Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."*
3. These articles do not state an unlimited right to expression but acknowledge the need to accommodate the needs of society for safety, peace and order. In particular, article 20 requires the State to restrict expression that leads to hostility or violence.
4. Therefore, groups or individuals cannot claim that they have an internationally recognized right to use expression to advocate violence based on national, racial or religious hatred.

IV. TERRORISM AS A VIOLATION OF HUMAN RIGHTS

A. Legal objection to terrorism as a violation of human rights:

1. General Assembly Resolution 49/185

"Mindful of the need to protect human rights of and guarantees for the individual in accordance with the relevant international human rights principles and instruments, particularly the right to life, (the UN General Assembly) Reiterates its unequivocal condemnation of all acts, methods and practices of terrorism, as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences on the economic and social development of States;"

2. Terrorism usually violates one of the following articles of the ICCPR:

- a. Prohibition against arbitrary deprivation of life (Article 6).
- b. Prohibition against torture or cruel, inhuman and degrading treatment. (Article 7)

3. Acts of international terrorism may also violate the customary international law of armed conflict, which is a parallel body of international law to human rights law. For example, as reflected in the 1949 Geneva Conventions, persons committing offenses defined as grave breaches of the Conventions may be prosecuted by any nation.

4. Acts of international terrorism involving murder, extermination, deportation, and other inhumane acts committed against any civilian population may also constitute crimes against humanity in violation of customary international law.

B. Possible legal defenses for terrorism

1. Necessity:

- a. Terrorist may argue that violation of human rights protections is necessary to achieve another more important human rights objective.
- b. ICCPR Article 5 states:

"Nothing in the present Covenant may be interpreted as implying for any State, group or individual any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein...."

2. Self Defense

- a. Use of force in self-defense can only be justified to prevent imminent death or serious bodily harm.
- b. Therefore, the use of force to achieve self-defense of self-determination rights or free speech rights is not permitted.

3. Retaliation:

- a. Defined as *"infliction upon a wrongdoer of the same injury which he has caused another."*
- b. Retaliation is not a justifiable basis for action under international law or most domestic legal systems. Remedies for injury must be sought through recognized legal authorities.
- c. A related concept known as "reprisal" permits a State engaged in international armed conflict to use measures against an enemy State that are prohibited by the Geneva Convention if that enemy State had earlier violated the Geneva Conventions. Reprisal may not be directed against civilians or civilian property.

V. HUMAN RIGHTS ENFORCEMENT MECHANISMS

A. Domestic protection:

- 1. Most human rights protection is accomplished individual State domestic legal systems. Most domestic legal systems include the following features that protect the rights of individuals:
 - a. Constitutions with articles that ensure minimal human rights that cannot be restricted by state action.
 - b. Courts that are empowered to issue binding orders on the government.
 - c. Opportunities for peaceful democratic change in the government.

2. Article 2 of ICCPR obligates States Parties to the Covenant to:

"ensure that any party whose rights or freedoms as herein recognized are violated shall have an effective remedy....determined by competent judicial, administrative or legislative authorities."

B. International Legal Protections for human rights

1. UN Organizations

a. UN Human Rights Commission

- 1) Established in 1946 by the UN Economic and Social Commission (ECOSOC) acting under article 68 of the Charter.
- 2) According to ECOSOC Resolutions 1235 and 1503 the Commission on Human Rights may receive petitions from individual victims, witnesses and non-governmental organizations and may investigate and report to the Economic and Social Council a finding of a pattern of gross violation if a "consistent pattern of gross and reliably attested violations" is revealed.
- 3) The ECOSOC or the General Assembly may then adopt resolution calling on the governments concerned to comply with their obligations under the Charter not to violate human rights. The ECOSOC may call upon member states to impose voluntary sanctions.

b. UN Human Rights Committee

- 1) Established by the International Covenant on Civil and Political Rights.
- 2) State parties agree to send reports to the Committee on measures "they have adopted which give effect to the rights recognized (by the Covenant on Civil and Political Rights) and on the progress made in the enjoyment of those rights.
- 3) States may file complaints against other States.

- 4) Individuals may file complaints with the Committee if they are from State that has agreed to follow the First Optional Protocol to the Covenant on Civil and Political Rights.

C. UN Security Council

1. Using its authority under the United Nations Charter, the Security Council has taken action against nations that engage in human rights violations it finds to be a threat to the peace, breach of the peace, or acts of aggression:
 - a. Economic sanctions:
 - b. Creation of International Tribunals for prosecution and punishment of human rights violators.
 - c. Peace enforcement.

D. Regional Organizations

1. There are numerous regional systems for protecting human rights:
 - a. The European Human Rights Commission and the European Human Rights Court
 - b. Organization of American States (OAS) Human Rights Commission and American Court of Human Rights.

VI. CONCLUSION

- A. Concern for human rights is sometimes offered by terrorists in an attempt to justify their crimes. In such cases:
 1. Often, no such human rights exist in international law.
 2. International human rights law does not authorize the use of violence to achieve human rights goals.
- B. International human rights treaties provide the following protections against terrorism:
 1. A common understanding of human rights acceptable by all cultures tests the legitimacy of the causes that terrorist fight for.
 2. Strict prohibition of the methods of terrorism and terrorist acts.

3. A peaceful means for resolving legitimate human rights complaints as a viable alternative to terrorism.